

House Bill 1035 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 129th, Sheldon of the 105th, Floyd of the 147th, Rogers of the 26th, May of the 111th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to provide for a 1 percent sales tax to be used to fund transportation
3 purposes in regional commission areas within the state; to provide for the development of a
4 list of transportation purposes and projects by the regional development commission in
5 cooperation with the Department of Transportation; to provide for an opt out of the plan by
6 the county governing authority in each county within the regional commission area; to
7 provide for the regional commission to pass a resolution calling for a referendum within the
8 participating counties; to provide for the tax to be levied by the participating counties; to
9 provide for the funds collected to be deposited in regional accounts with the Department of
10 Transportation; to provide for the Department of Transportation to implement the contracting
11 and constructing of the transportation projects on the regional lists; to provide for
12 exemptions; to provide for a phase in of the transportation purposes fund in the Department
13 of Transportation; to amend Code Section 48-9-3 of the Official Code of Georgia Annotated,
14 relating to the motor fuel tax, so as to extend the expiration date for the exemption from the
15 motor fuel tax for certain public transit and public campus transportation systems; to provide
16 for related matters; to provide for a conditional effective date; to provide for automatic
17 repeal; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 **SECTION 1.**

20 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
21 taxes, is amended by adding a new article to read as follows:

"ARTICLE 5

48-8-220.

(a) As used in this Code section, transportation purposes shall include, but not be limited to, roads, freight and passenger rail, bridges, airports, public transit, buses, seaports, and all accompanying infrastructure and services.

(b) In accordance with the provisions of Article IX, Section IV, Paragraph V of the Constitution, on or after July 1, 2009, a sales and use tax of 1 percent, limited to a specified period of time, to fund transportation purposes in a regional commission area may be levied as provided in this Code section.

(c) There are created within this state special transportation districts. The geographical boundary of each regional commission area, as defined in Article 2 of Chapter 8 of Title 50, shall correspond with and shall be conterminous with the geographical boundary of one of the special transportation districts. When the levy of a regional area transportation tax is authorized according to the procedures of this Code section, the counties within the special transportation district shall levy a sales and use tax. The tax under this Code section shall be collected by the Department of Revenue and deposited with the Department of Transportation to be expended within the special transportation district and shall be levied within such special transportation district only upon approval by a majority of the qualified voters residing within the limits of the special transportation district, as tabulated by a district-wide vote, voting in a referendum thereon.

(d) Prior to calling for the referendum authorized by this Code section, the regional commission shall create, in cooperation with the Department of Transportation, a list of transportation purposes to be funded within the special transportation district. The formulation of the list of transportation purposes shall conform to federal transportation law where applicable. In order to be approved, the list shall receive a majority vote of the publicly elected members of the regional commission. In addition, and also by a majority vote, the regional commission shall determine the maximum period of time the tax shall be levied, and the maximum cost of such projects for transportation purposes. The proposal shall then be submitted for approval to each county governing authority within the regional commission area. Each county governing authority shall have 45 days from the time the list is approved by the regional commission to vote to opt out of the special transportation district for purposes of levying the tax authorized by this Code section. In order for a county governing authority to opt out of the special transportation district, a majority vote of the county governing authority shall be required. If any county governing authority opts out of the proposal, any of the other county governing authorities in the regional commission area shall have 15 days in which to reconsider voting to opt out, at

1 the discretion of the county governing authority. If a county governing authority opts out
2 of the special transportation district, no referendum shall be held in that county and no tax
3 under the provisions of this Code section shall be levied in that county. The counties that
4 do not opt out of the special transportation district, within the time limits prescribed in this
5 Code section, shall be the taxing authorities for purposes of any tax under the provisions
6 of this Code section.

7 (e) After the votes to opt out are completed by the county governing authorities, the
8 regional commission, in cooperation with the Department of Transportation, may revise
9 the list of transportation purposes, if necessary, to amend any projects on the list that were
10 planned in a county that has elected to opt out of the special transportation district. Upon
11 the completion of the revision of the list, the regional commission may, upon a majority
12 vote of the publicly elected members, pass a resolution calling for a referendum of the
13 qualified voters voting on the referendum in the participating counties in the special
14 transportation district to approve or disapprove of the levy of the tax provided for in this
15 Code section.

16 (f) Except as otherwise provided in this Code section, the procedures for conducting the
17 referendum on the question of imposing the tax and for submitting the question again to
18 the voters in the event the tax is not approved shall correspond generally to the procedures
19 provided for by Part 1 of Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia
20 Annotated, relating to the special county 1 percent sales and use tax, as now or hereafter
21 amended. Proceedings for the reimposition of such tax shall be in the same manner as
22 proceedings for the initial imposition of the tax, but the newly authorized tax shall not be
23 imposed until the expiration of the tax then in effect.

24 (g) A resolution by the regional commission calling for the levy of the tax and the ballot
25 submitting the question of the levy of the tax to the voters of the special transportation
26 district shall describe:

27 (1) The specific transportation purposes to be funded;

28 (2) The approximate cost of such projects for transportation purposes, the total cost of
29 which shall also be the maximum amount of net proceeds to be raised by the tax; and

30 (3) The maximum period of time, to be stated in calendar years, for which the tax may
31 be levied.

32 (h) If the tax provided for in this Code section is approved by a majority of the voters in
33 the special transportation district, the tax shall be levied by the participating counties in the
34 special transportation district. The funds received from the tax shall be collected by the
35 Department of Revenue and deposited in accounts managed by the Department of
36 Transportation that are divided according to the special transportation district from which
37 the funds were collected. Under the authority of Article IX, Section IV, Paragraph V of

1 the Constitution, these funds shall be used for transportation purposes and projects on the
2 list approved by the voters in the special transportation district. The Department of
3 Transportation shall be responsible for designing, planning, and contracting for the
4 construction of the projects.

5 (i) Nothing in this Code section shall prohibit counties and municipalities located in the
6 special transportation district from imposing as additional taxes local sales and use taxes
7 authorized by general law.

8 (j) The tax imposed pursuant to this Code section shall not be subject to and shall not
9 count with respect to any general law limitation regarding the maximum amount of local
10 sales and use taxes which may be levied in any jurisdiction in this state.

11 (k) The tax imposed pursuant to this Code section shall not apply to and shall not be levied
12 on:

13 (1) The sale or use of any type of fuel used for off road heavy-duty equipment, off road
14 farm or agricultural equipment, locomotives, aircraft, or watercraft;

15 (2) The sale or use of fuel that is used for propulsion of motor vehicles on the public
16 highways. For purposes of this paragraph, a motor vehicle means a self-propelled vehicle
17 designed for operation or required to be licensed for operation upon the public highways;

18 (3) The sale or use of tangible personal property used in the production or generation of
19 energy; or

20 (4) The sale or use of energy used in the manufacturing or processing of tangible goods
21 primarily for resale.

22 (l) Except as otherwise specifically provided in this Code section, the tax imposed
23 pursuant to this Code section shall be subject to any sales and use tax exemption which is
24 otherwise imposed by general law; provided, however, that the tax imposed pursuant to this
25 Code section shall be levied on the sale of food or beverages as provided for in paragraph
26 (57) of Code Section 48-8-3.

27 (m) The tax imposed pursuant to this Code section shall only be levied on the first
28 \$5,000.00 of any transaction subject to the tax.

29 (n) An amount equal to not less than 100 percent of the total amount of proceeds collected
30 in a special transportation district shall be expended within that special transportation
31 district on transportation purposes as approved in the referendum of the voters in the
32 special transportation district and shall not be subject to any existing fund allocation or
33 distribution requirements.

34 (o) The Department of Transportation shall conduct continuing studies and monitoring of
35 the status of economic parity throughout the State of Georgia for the contracting of
36 transportation projects with particular emphasis on the procurement practices of the
37 department.

1 48-8-221.

2 The phase in of the transfer of a portion of the sales and use tax on motor fuels to the fund
3 in the Department of Transportation to be designated solely for transportation purposes,
4 provided for in Article III, Section IX, Paragraph VI(b)(2) of the Constitution, shall be as
5 follows:

6 (1) As of July 1, 2010, 50 percent of the applicable amount collected in the previous
7 fiscal year shall be transferred to the transportation purposes fund; and

8 (2) As of July 1, 2011, and annually thereafter, 100 percent of the applicable amount
9 collected in the previous fiscal year shall be transferred to the transportation purposes
10 fund."

11 SECTION 2.

12 Code Section 48-9-3 of the Official Code of Georgia Annotated, relating to the motor fuel
13 tax, is amended by revising subparagraphs (A) and (B) of paragraph (10) of subsection (b)
14 as follows:

15 "(10)(A) During the period of July 1, ~~2006~~ 2008, through June 30, ~~2008~~ 2010, sales of
16 motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for public mass transit
17 vehicles which are owned by public transportation systems which receive or are
18 eligible to receive funds pursuant to 49 U.S.C. Sections 5307 and 5311 for which
19 passenger fares are routinely charged and which vehicles are used exclusively for
20 revenue generating purposes which motor fuel sales occur at bulk purchase facilities
21 approved by the department.

22 (B) During the period of July 1, ~~2006~~ 2008, through June 30, ~~2008~~ 2010, sales of motor
23 fuel, as defined in paragraph (9) of Code Section 48-9-2, for vehicles operated by a
24 public campus transportation system, provided that such system has a policy which
25 provides for free transfer of passengers from the public transportation system operated
26 by the jurisdiction in which the campus is located; makes the general public aware of
27 such free transfer policy; and receives no state or federal funding to assist in the
28 operation of such public campus transportation system and which motor fuel sales
29 occur at bulk purchase facilities approved by the department."

30 SECTION 3.

31 Section 1 of this Act shall become effective on January 1, 2009; provided, however, that this
32 Act shall only become effective on January 1, 2009, upon the ratification of a resolution at
33 the November, 2008, state-wide general election, which resolution amends the Constitution
34 so as to authorize additional funding sources for transportation purposes. If such resolution

1 is not so ratified, Section 1 of this Act shall not become effective and shall stand repealed in
2 its entirety on January 1, 2009. Section 2 of this Act shall become effective on July 1, 2008.

3 **SECTION 4.**

4 All laws and parts of laws in conflict with this Act are repealed.